IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6187 OF 2006

Dnydev Ramrao Kadam and others Petitioners
versus
The State of Maharashtra & ors. Respondents

Mr.A.V.Anturkar with S.S.Salunkhe for petitioners
Mr.S.A.Rajeshirke for respondent no.4.
Mrs.M.P.Thakur, AGP for respondents 1 and 2.
Mr.P.S.Dani for respondent no.3.

CORAM : F.I.REBELLO AND
R.V.MORE, JJ.

DATE : 08th January 2007

PC :

1. Rule. Heard forthwith.

2. The petitioners are members of Hanuman Vividh Karyakari Sahakari Society Ltd. who have moved through their Secretary. The relief which the petitioners seek is to quash the order dated 4th September 2006 passed by respondent no.2 by which the respondent no.2 has decided to conduct elections. The petition also sets out that the voters list has been finalised.

3. On behalf of the petitioner the learned counsel points out to us the Government Notification published in Government Gazette on 22nd March 2005 whereby only Primary Agricultural Credit Societies having paid up share capital of Rs.50 lakh and above, have been notified as societies for the purposes of sub section (1) of Section 73(i)(c) of Maharashtra Co-operative Societies Act, 1960. The learned counsel, therefore, points out that insofar as their society is concerned, its paid up share capital is Rs.24 lakh i.e. less than Rs.50 lakh and consequently the action of respondents in interfering the election process is without any authority of law. The election has to be carried out by the Managing Committee of the society itself. It is secondly submitted that Krushnai Vividh Karyakari Sahakari Society Ltd. has been added as the party as 150 members belonging to that society joined the aforesaid society with an undertaking by that society that once they became members of that society, they will cease to be the members of Hanuman V.K.S.Society Ltd..

4. On behalf of respondents 1 and 2 a reply has been filed by Mahendra Magar. It is pointed out therein that it was at the request of Hanuman

V.K.S.Society and its Managing Committee that the respondent no.2 is conducting the elections. On behalf of respondent no.3 the learned counsel points out that there is no power in its members to continue as members of Hanuman Vividh Karyakari Sahakari Society Ltd; as there is no bar under the Acts, Rules or bye-laws prohibiting membership of the society.

5. Considering the above, two issues arise for our consideration viz. :-

a) whether respondent no.2 could have interfered with the electoral process?

b) whether there is bar on members of Krushnai Vividh Karyakari Sahakari Society Ltd.?

6. Insofar as second issue is concerned, we have already noted the respective arguments of learned counsel for petitioners and for respondent no.3. At any rate, we do not intend to interfere at this stage as any aggrieved party would have remedy of taking recourse to the provisions of Maharashtra Co-operative Societies Act and Rules framed thereunder.

7. Insofar as the first issue is concerned, there seems to be a dispute as to whether there was a subsisting resolution of the Managing Committee when respondent no.2 commenced the electoral process from the stage of preparing electoral roll. We do not propose to go into that issue considering what is hereinafter set out.

8. Respondent no.2 could not have interfered with the electoral process as that power could not have been conferred by the Act and Rules on respondent no.2 as the Hanuman Vividh Karyakari Sahakari Society Ltd. not being a notified society. The right to hold the elections would be of the society in terms of the bye-laws. At the highest, on the request through a proper resolution of the society, the respondent no.2 could have deputed a person to supervise the elections and nothing beyond that. Respondent no.4 has put its appearance. They are supporting the stand of the petitioners.

9. In the light of this, the petition is disposed off by issuing the following directions:-

(A) The process of elections and holding of elections to the new Managing Committee is that of the Managing Committee of respondent no.4, Hanuman Vividh Karyakari Sahakari Society Ltd;

(B) The respondent no.2 to depute a person for supervising and holding of the elections, if respondent no.4 has passed resolution for that purpose;

(C) Considering that there was a stay by this Court, the entire exercise to be completed within four weeks from today;

(D) Any grievance that the parties may have, can be agitated before the Competent Court;

(E) All other contentions of the parties are kept open.

10. Rule is made absolute in the above terms. No order as to costs.

(F.I.REBELLO, J.)

(R.V.MORE, J.)